

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 MICHAEL MCCALL and ARTHUR WEST,

11 Plaintiff,

12 v.

13 INTERCITY TRANSIT, EVE JOHNSON,
14 MARTIN THIES, JOE BAKER, MARY
15 DEAN, TOM GREEN, ED HILDRETH,
16 KAREN ROGERS, SANDRA ROMERO,
17 TOM BJORGREN, BJORGREN BAUER,
BJORGREN, PLLC,

Defendants.

Case No. CV10-5564 RBL

AMENDED ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT
[Dkt. #27]

18 THIS MATTER comes before the Court on Defendants' Motion for Summary Judgment
19 [Dkt. #27] on all claims against them. For the following reasons, the motion is GRANTED.
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21 I. FACTS

22 This case arises out of an altercation between Plaintiff Michael McCall and the
23 employees of Intercity Transit. On July 1, 2010, McCall was asked to exit an Intercity Transit
24 bus by its driver at the Lacey Transit Center in Olympia, Washington, because of his incessant
25 use of profanity. McCall refused and claimed he had the right to say anything he wanted. When
26 he was blocked from boarding another bus, he became verbally aggressive toward Transit City
27 employees and “[got] up near their faces.” [Def. Mot., Dkt. #27, at p. 4]. Operations Supervisor
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1 John Lucas issued a 365-day exclusion notice to McCall due to the belief that McCall's behavior
2 would turn violent.

3 On July 7, McCall called James Merrill, the Operations Director responsible for Intercity
4 Transit's exclusion notice appeal hearings. Merrill was leaving for a scheduled vacation and
5 forwarded the message to Phillip Early, the Fixed Route Manager, who returned McCall's phone
6 call. McCall neither answered nor returned Early's call. When Merrill returned from his
7 vacation, he found a document from McCall containing a request for a hearing and a request for
8 public records under the Washington Public Records Act (PRA), RCW 42.56. Merrill returned
9 McCall's phone call, but McCall never called back. Plaintiff Arthur West submitted an identical
10 public records request on July 29. Both West and McCall's PRA requests were processed and
11 the documents were made available on August 3. McCall did not pick up his documents.

12 Plaintiffs West and McCall claim that Intercity Transit violated their First and Fourteenth
13 Amendment rights, conspired to violate those rights, violated the Washington Public Records
14 Act, falsely arrested and imprisoned them, and generally acted negligently. The Defendants
15 respond that none of these claims are supported by fact or law. At issue is whether there is any
16 genuine question of material fact in any claim raised by the Plaintiffs which would preclude
17 Defendants' Motion for Summary Judgment as a matter of law.

18 **II. SUMMARY JUDGMENT STANDARD**

19 Summary judgment is appropriate when, viewing the facts in the light most favorable to
20 the nonmoving party, there is no genuine issue of material fact which would preclude summary
21 judgment as a matter of law. Once the moving party has satisfied its burden, it is entitled to
22 summary judgment if the non-moving party fails to present, by affidavits, depositions, answers to
23 interrogatories, or admissions on file, "specific facts showing that there is a genuine issue for
24 trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "The mere existence of a scintilla of
25 evidence in support of the non-moving party's position is not sufficient." *Triton Energy Corp. v.*
26 *Square D Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Factual disputes whose resolution would not
27 affect the outcome of the suit are irrelevant to the consideration of a motion for summary
28 judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In other words,

1 “summary judgment should be granted where the nonmoving party fails to offer evidence from
2 which a reasonable [fact finder] could return a [decision] in its favor.” *Triton Energy*, 68 F.3d at
3 1220.

4 III. DISCUSSION

5 Even in the light most favorable to the Plaintiffs, there is no evidence from which a
6 reasonable jury could return a verdict in Plaintiffs’ favor on any claim.

7 A. Intercity Transit did not violate McCall’s right to free speech as a matter of law.

8 Plaintiffs claim that Defendants violated Plaintiff McCall’s First Amendment right when
9 he was denied access to Intercity Transit buses on the basis of his speech. Defendant argues that
10 McCall was not unconstitutionally excluded. The First Amendment right to free speech excludes
11 obscene, lewd, and fighting words. *Chaplinsky v. N.H.*, 315 U.S. 568, 571 (1942). McCall’s
12 exclusion pursuant to Intercity Transit policy for incessant use of aggressive language does not
13 violate his First Amendment rights.

14 Even if McCall’s profanity was protected speech, Intercity Transit may enforce
15 reasonable speech restrictions within their property. A public bus system is a nonpublic fora,
16 unintended for public discourse. *Lehman v. Shaker Heights*, 418 U.S. 298, 303–04, 94 S. Ct.
17 2714 (1974). Defendants may therefore place reasonable time, place, and manner restrictions on
18 speech on their buses. *Id.* The Intercity Transit Rules of Conduct do exactly that, prohibiting
19 obscene language as well as any harassing behavior inciting a “breach of peace.” [Merrill Decl.,
20 Dkt. #9, at p. 1]. Defendants applied their Rules in excluding McCall from the bus, and the
21 exclusion was reasonable. McCall’s language created an offensive and unsafe environment for
22 drivers and passengers, and undermined Intercity Transit’s purpose to provide safe and effective
23 public transportation.

1 Defendants' Motion for Summary Judgment on the Plaintiffs' First Amendment claim is
2 GRANTED, and the claim is DISMISSED WITH PREJUDICE.

3 **B. Plaintiffs' Fourteenth Amendment claim is unsupported.**

4 Plaintiffs claim that Defendants violated their Fourteenth Amendment right to
5 transportation. Defendants respond that Plaintiffs cannot support this claim with fact or law.
6 The Fourteenth Amendment protects a citizen's right to remain in a public place, and to move
7 from one place to another. *Chicago v. Morales*, 527 U.S. 41, 53–54, 119 S. Ct. 1849 (1999).
8 Neither Plaintiff offers any evidence or argument to support the claim that they were
9 unconstitutionally denied these rights. McCall was not unconstitutionally denied transportation;
10 he was reasonably excluded for a temporary period because of his distracting and unsafe
11 behavior. Defendants' Motion for Summary Judgment on the Plaintiffs' Fourteenth Amendment
12 claim is GRANTED, and the claim is DISMISSED WITH PREJUDICE.

13 **C. Plaintiffs' §1985 and §1986 claims are unsupported.**

14 Plaintiffs allege that Intercity Transit conspired to violate their constitutional rights. To
15 properly bring a claim under 42 U.S.C. §1985 and §1986, a plaintiff must allege that the
16 defendant conspired to deprive him of his First or Fourteenth Amendment rights. Because both
17 Plaintiffs' First and Fourteenth Amendment claims are without merit, these claims are meritless
18 as well. Defendants' Motion for Summary Judgment on the Plaintiffs' §1985 and §1986 claims
19 are GRANTED, and the claims are DISMISSED WITH PREJUDICE.

20 **D. Plaintiffs' negligence claims are unsupported.**

21 Plaintiffs' negligence theory is unclear, but seems to rely on the public duty doctrine.
22 Plaintiff West alleges that Defendants' counsel has shown "deliberate indifference" and thereby
23 violated a "clearly established duty of conscientious service to the public." [Decl. of Pl. West,
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1 Dkt. #37, at p. 3–4]. But a public entity must exercise a duty of care when it owes that duty “to
2 the injured plaintiff,” not to the public in general. *Obsborn v. Mason County*, 157 Wn.2d 18, 27,
3 134 P.3d 197 (2006). The negligence claim is therefore without merit, the Defendants’ Motion
4 for Summary Judgment is GRANTED, and the claim is DISMISSED WITH PREJUDICE.

5 **E. Plaintiffs’ false arrest and imprisonment claims are unsupported.**

6 To establish a false imprisonment or false arrest claim, a plaintiff must show that the
7 defendant restrained him without legal authority, or that his right to personal liberty was
8 otherwise violated. *Bender v. Seattle*, 99 Wn.2d 582, 591, 664 P.2d 492 (1983). Plaintiffs show
9 neither, and fail to address the claim completely in their response to Defendants’ Summary
10 Judgment Motion. Defendants’ Motion for Summary Judgment on the Plaintiffs’ false arrest and
11 imprisonment claims are GRANTED, and those claims are DISMISSED WITH PREJUDICE.
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13 **F. Plaintiffs’ Public Records Act claims have no basis in fact.**

14 Under the Washington State Public Records Act, RCW 45.56, state agencies must
15 respond to a citizen’s request for public records. Plaintiff West claims that Defendants “failed to
16 respond fully” to his request for public records in violation of the PRA, and accuses the
17 Defendants of “silent withholding” and “destroying” documents. [Decl. of Pl. West, Dkt. #37, at
18 p. 3]. Plaintiff McCall claims that the Defendants committed a “blatant and cold blooded act of
19 spoliation of material evidence.” [Pl. McCall’s Reply, Dkt. #35, at p. 5]. But Plaintiffs provide
20 no evidence to show that the Defendants withheld or purposefully destroyed any document.
21 Intercity Transit responded to the requests in a reasonable amount of time, and made the records
22 available to both West and McCall. Defendants’ Motion for Summary Judgment on the
23 Plaintiffs’ PRA claims are GRANTED, and the claims are DISMISSED WITH PREJUDICE.
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1 **G. Arthur West has no standing as a plaintiff in this case**

2 Finally, Plaintiff Arthur West has no standing to assert a claim in this case. In order to
3 have standing in federal court, a plaintiff must allege an injury that is: (1) concrete and
4 particularized; (2) caused by the defendants' actions; and (3) redressible by court verdict. *See*
5 *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). West claims he is generally harmed by
6 Intercity Transit's "overbroad rules" [Pl. West's Resp., Dkt. #34, at p. 3] and the "overzealous
7 enforcement of [Intercity Transit's] unconstitutional policies banning 'profanity' and 'hanging
8 out.'" [Pl. West's Decl., Dkt. #37, at p. 5–6]. He fails to describe any "concrete and
9 particularized" injury resulting from these rules and policies. Moreover, West does not
10 demonstrate the personal knowledge necessary to create a genuine issue of material fact for any
11 of the claims he lists. Those claims are therefore DISMISSED WITH PREJUDICE.
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14 **III. CONCLUSION**

15 The Plaintiffs have not raised any genuine issue of material fact as to any of their claims,
16 and the Defendants are entitled to a judgment as a matter of law. The Defendants' Summary
17 Judgment Motion [Dkt. #27] is GRANTED and Plaintiffs' claims are DISMISSED, in their
18 entirety, WITH PREJUDICE.

19 **IT IS SO ORDERED.**

20 Dated this 16th day of June, 2011.

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24 RONALD B. LEIGHTON
25 UNITED STATES DISTRICT JUDGE
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